

Proposal for a

COMMISSION REGULATION (EC) No .../..

of [...]

amending Commission Regulation (EC) No 1702/2003, laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽¹⁾ (hereinafter referred to as ‘the basic Regulation’), and in particular Articles 5 and 6 thereof,

Having regard to Commission Regulation (EC) No 1702/2003 of 24 September 2003, laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations⁽²⁾,

Whereas :

- (1) Following the end of the transition period for permits to fly, it is necessary to adopt common requirements and administrative procedures for the issuance of these certificates.
- (2) The measures provided by this Regulation are based on the opinion issued by the Agency ⁽³⁾ in accordance with Articles 12(2)(b) and 14(1) of the basic Regulation.
- (3) The measures provided for in this Regulation are in accordance with the opinion⁴ of the European Aviation Safety Agency Committee established by Article 54(3) of the Basic Regulation.
- (4) The Commission Regulation (EC) No 1702/2003 should therefore be amended accordingly,

¹ OJ L 240, 7.9.2002, p.1. Regulation as last amended by Commission Regulation (EC) 1701/2003 of 24 September 2003 (OJ L 243, 27.9.2003, p. 5).

² OJ L 243, 27.9.2003, p. 6. Regulation as last amended by Commission Regulation (EC) No 706/2006 of 8 May 2006 (OJ L 122. 9.5.2006, p. 16).

³ Opinion 02-2007

⁴ [To be issued.]

HAS ADOPTED THIS REGULATION:

Article 1

The Commission Regulation (EC) 1702/2003 is hereby amended by adding a new paragraph 15 to article 2 as follows:

“15. The conditions determined before 28 March 2007 by the Member States for permit to fly or other airworthiness certificate issued for aircraft which did not hold a certificate of airworthiness or restricted certificate of airworthiness issued under this Regulation, are deemed to be determined in accordance with this Regulation, unless the Agency determines before 28 March 2008 that such conditions do not provide for a level of safety equivalent to that required by the basic Regulation or this regulation.

The permit to fly or other airworthiness certificate issued by Member States before 28 March 2007 for aircraft which did not hold a certificate of airworthiness or restricted certificate of airworthiness issued under this Regulation, are deemed to be a permit to fly issued in accordance with this Regulation until 28 March 2008.”

Article 2

The Annex (Part 21) to Commission Regulation (EC) 1702/2003 is hereby amended as follows:

1. Paragraph 21A.139 is amended by adding a new subparagraph (b)(1)(xvii) as follows:

“(xvii) Issue of permit to fly.”

2. Paragraph 21A.163 is amended by adding a new subparagraph (e) as follows:

“(e) Under procedures agreed with its competent authority for production, and when the production organisation itself is controlling under its POA the configuration of the aircraft and is attesting conformity with the design conditions approved for the flight, to issue a permit to fly in accordance with 21A.711(c) including approval of the flight conditions in accordance with 21A.710(a)(3).”

3. Paragraph 21A.165 is amended by adding a new subparagraph (j) as follows:

“(j) Establish compliance with 21A.711(c) and (e) before issuing a permit to fly (EASA Form 20b, see Appendix) to an aircraft.”

4. The title of Subpart H of Section A is replaced by the following:

“SUBPART H — CERTIFICATES OF AIRWORTHINESS AND RESTRICTED CERTIFICATES OF AIRWORTHINESS”

5. Paragraph 21A.173 is amended by deleting subparagraph (c).

6. Paragraph 21A.174 is amended by deleting subparagraph (d).

7. Subparagraph (b) of paragraph 21A.179 is replaced by the following:
“(b) Where ownership of an aircraft has changed, and the aircraft has a restricted certificate of airworthiness not conforming to a restricted type-certificate, the airworthiness certificates shall be transferred together with the aircraft provided the aircraft remains on the same register, or issued only with the formal agreement of the competent authority of the Member State of registry to which it is transferred.”
8. Paragraph 21A.185 is deleted.
9. Paragraph 21A.263 is amended by replacing subparagraph (b) by the following:
“(b) Subject to 21A.257(b), compliance documents submitted by the applicant for the purpose of obtaining:
1. the approval of flight conditions required for a permit to fly; or
2. a type-certificate or approval of a major change to a type design; or
3. a supplemental type-certificate; or
4. an ETSO authorisation under 21A.602B(b)(1); or
5. a major repair design approval;
shall be accepted by the Agency without further verification.”
10. Paragraph 21A.263 is amended by adding new subparagraphs (c)(6) and (c)(7) as follows:
“6. To approve the conditions under which a permit to fly can be issued in accordance with 21A.710(a)(2), except for initial flights of
- a new type of aircraft; or
- an aircraft modified by a change that is or would be classified as a significant major change or significant STC; or
- an aircraft whose flight and/or piloting characteristics may have been significantly modified;
7. To issue a permit to fly in accordance with 21A.711(b) for an aircraft it has designed or modified, and when the design organisation itself is controlling under its DOA the configuration of the aircraft and is attesting conformity with the design conditions approved for the flight.”
11. Paragraph 21A.265 is amended by adding new subparagraphs (f) and (g) as follows:
“(f) Where applicable, under the privilege of 21A.263(c)(6), determine the conditions under which a permit to fly can be issued.
(g) Where applicable, under the privilege of 21A.263(c)(7), establish compliance with 21A.711(b) and (e) before issuing a permit to fly (EASA Form 20b, see Appendix) to an aircraft.”
12. Subpart P of Section A is replaced by the following:

“SUBPART P – PERMIT TO FLY

21A.701 **Scope**

(a) Permits to fly shall be issued in accordance with this Subpart to aircraft that do not meet, or have not been shown to meet, applicable airworthiness requirements but are capable of safe flight under defined conditions and for the following purposes:

1. Development;
2. Showing compliance with regulations or certification specifications;
3. Design organisations or production organisations crew training;
4. Production flight testing of new production aircraft;
5. Flying aircraft under production between production facilities;
6. Flying the aircraft for customer acceptance;
7. Delivering or exporting the aircraft;
8. Flying the aircraft for Authority acceptance;
9. Market survey, including customer's crew training;
10. Exhibition and air show;
11. Flying the aircraft to a location where maintenance or airworthiness review are to be performed, or to a place of storage;
12. Flying an aircraft at a weight in excess of its maximum certificated takeoff weight for flight beyond the normal range over water, or over land areas where adequate landing facilities or appropriate fuel is not available;
13. Record breaking, air racing or similar competition;
14. Flying aircraft meeting the applicable airworthiness requirements before conformity to the environmental requirements has been found;
15. For recreational flying activity on individual aircraft or types for which a certificate of airworthiness or restricted certificate of airworthiness is not appropriate.

(b) This Subpart does not apply to aircraft registered outside the Member States except for aircraft used by an operator for which any Member State ensures oversight of operations.

21A.703 Eligibility

Any natural or legal person shall be eligible as an applicant for a permit to fly except for a permit to fly requested for the purpose of 21A.701(a)(15) where the applicant shall be the owner. A person eligible for an application for permit to fly is also eligible for application for the approval of the flight conditions.

21A.705 Competent Authority

Notwithstanding 21.1, for the purpose of this Subpart, the 'Competent Authority' shall be:

- (a) The authority designated by the Member State of registry; or
- (b) For unregistered aircraft, the authority designated by the Member State which prescribed the identification marks.

21A.707 Application for permit to fly

- (a) Pursuant to 21A.703 and when the applicant has not been granted the privilege to issue a permit to fly, an application for a permit to fly shall be made to the Competent Authority in a form and manner established by that authority.
- (b) Each application for a permit to fly shall include:
 - 1. The purpose(s) of the flight(s), in accordance with 21A.701;
 - 2. The ways in which the aircraft does not comply with the applicable airworthiness requirements;
 - 3. The flight conditions approved in accordance with 21A.710.
- (c) Where the flight conditions are not approved at the time of application for a permit to fly, an application for approval of the flight conditions shall be made in accordance with 21A.709.

21A.708 Flight conditions

Flight conditions include:

- (a) The configuration(s) for which the permit to fly is requested;
- (b) Any condition or restriction necessary for safe operation of the aircraft, including:
 - 1. the conditions or restrictions put on itineraries or airspace, or both, required for the flight(s);
 - 2. the conditions and restrictions put on the flight crew to fly the aircraft;
 - 3. the restrictions regarding carriage of persons other than flight crew;
 - 4. the operating limitations, specific procedures or technical conditions to be met;
 - 5. the specific flight test programme (if applicable);
 - 6. the specific continuing airworthiness arrangements including maintenance instructions and regime under which they will be performed.
- (c) The substantiation that the aircraft is capable of safe flight under the conditions or restrictions of subparagraph (b);
- (d) The method used for the control of the aircraft configuration, in order to remain within the established conditions.

21A.709 Application for approval of flight conditions

- (a) Pursuant to 21A.707(c) and when the applicant has not been granted the privilege to approve the flight conditions, an application for approval of the flight conditions shall be made
 - 1. to the Agency in a form and manner established by the Agency; or
 - 2. when approval of the flight conditions is not related to the safety of the design, to the Competent Authority in a form and manner established by that authority.
- (b) Each application for approval of the flight conditions shall include:
 - 1. the proposed flight conditions; and
 - 2. the documentation supporting these conditions ; and
 - 3. a declaration that the aircraft is capable of safe flight under the conditions or restrictions of paragraph 21A.708(b):

21A.710 Approval of flight conditions

- (a) The flight conditions shall be approved:

1. when approval of the flight conditions is related to the safety of the design by:
 - (i) the Agency; or
 - (ii) by an appropriately approved design organisation, under the privilege of 21A.263(c)(6); or
 2. when approval of the flight conditions is not related to the safety of the design, by the Competent Authority, or the appropriately approved organisation that will also issue the permit to fly.
- (b) Before approving the flight conditions, the Agency, the Competent Authority or the approved organisation must be satisfied that the aircraft is capable of safe flight under the specified conditions and restrictions. The Agency or the Competent Authority may make or require the applicant to make any necessary inspections or tests for that purpose.

21A.711 Issue of a permit to fly

- (a) The Competent Authority shall issue a permit to fly:
1. upon presentation of the data required by 21A.707; and
 2. when the conditions of 21A.708 have been approved in accordance with 21A.710(a); and
 3. when the Competent Authority, through its own investigations, which may include inspections, or through procedures agreed with the applicant, is satisfied that the aircraft conforms to the design defined under 21A.708 before flight.
- (b) An appropriately approved design organisation may issue a permit to fly (EASA Form 20b, see Appendix) under the privilege granted under 21A.263(c)(7), when the conditions of 21A.708 have been approved in accordance with 21A.710(a).
- (c) An appropriately approved production organisation may issue a permit to fly (EASA Form 20b, see Appendix) under the privilege granted under 21A.163(e), when the conditions of 21A.708 have been approved in accordance with 21A.710(a).
- (d) An appropriately approved continuing airworthiness management organisation may issue a permit to fly (EASA Form 20b, see Appendix) under the privilege granted under Part M.A.711(b)(3) when the conditions of 21A.708 have been approved in accordance with 21A.710(a).
- (e) The permit to fly shall specify the purpose(s) and any conditions and restrictions approved under 21A.710. It may include conditions and restrictions prescribed by the Competent Authority outside the scope of the conditions of 21A.708(b);
- (f) For permits issued under subparagraph (b), (c), or (d) a copy of the permit to fly shall be submitted to the Competent Authority.

21A.713 Changes

- (a) Any change that invalidates the flight conditions or associated substantiation established for the permit to fly shall be approved in accordance with 21A.710. When relevant an application shall be made in accordance with 21A.709.
- (b) A change affecting the content of the permit to fly requires the issuance of a new permit to fly in accordance with 21A.711.

21A.715 Language

The manuals, placards, listings, and instrument markings and other necessary information required by applicable certification specifications shall be presented in one or more of the official language(s) of the European Community acceptable to the Competent Authority.

21A.719 Transferability

- (a) A permit to fly is not transferable.
- (b) Notwithstanding subparagraph (a) for a permit to fly issued for the purpose of 21A.701(a)(15), where ownership of an aircraft has changed, the permit to fly shall be transferred together with the aircraft provided the aircraft remains on the same register, or issued only with the agreement of the competent authority of the Member State of registry to which it is transferred.

21A.721 Inspections

The holder of, or the applicant for, a permit to fly shall provide access to the aircraft concerned at the request of the Competent Authority.

21A.723 Duration and continued validity

- (a) A permit to fly shall be issued for a maximum of 12 months and shall remain valid subject to:
 - 1. compliance with the conditions and restrictions of 21A.711(e) associated to the permit to fly;
 - 2. the permit to fly not being surrendered or revoked under 21B.530;
 - 3. the aircraft remaining on the same register.
- (b) Notwithstanding subparagraph (a) a permit to fly issued for the purpose of 21A.701(a)(15) may be issued for unlimited duration.
- (c) Upon surrender or revocation, the permit to fly shall be returned to the Competent Authority.

21A.725 Renewal of permit to fly

Renewal of the permit to fly shall be processed as a change in accordance with 21A.713.

21A.727 Obligations of the holder of a permit to fly

The holder of a permit to fly shall ensure that all the conditions and restrictions associated with the permit to fly are satisfied and maintained.

21A.729 Recordkeeping

- (a) All documents produced to establish and justify the flight conditions shall be held by the holder of the approval of the flight conditions at the disposal of the Agency and Competent Authority and shall be retained in order to provide the information necessary to ensure the continued airworthiness of the aircraft.
- (b) All documents associated to the issue of permits to fly under the privilege of approved organisations, including inspection records, documents supporting the approval of flight conditions and the permit to fly itself, shall be held by the related approved organisation at the disposal of the Agency or the Competent Authority and shall be retained in order to provide the information necessary to ensure the continued airworthiness of the aircraft.”

13. Paragraph 21B.20 is replaced by the following:

“21B.20 Obligations of the competent authority

Each competent authority of the Member State is responsible for the implementation of Section A, Subparts F, G, H, I and P only for applicants, or holders, whose principal place of business is in its territory.”

14. Paragraph 21B.25 is amended by replacing subparagraph (a) by the following:

“(a) General:

The Member State shall designate a competent authority with allocated responsibilities for the implementation of Section A, Subparts F, G, H, I and P with documented procedures, organisation structure and staff.”

15. The title of Subpart H of Section B is replaced by the following:

“SUBPART H — CERTIFICATES OF AIRWORTHINESS AND RESTRICTED CERTIFICATES OF AIRWORTHINESS”

16. Paragraph 21B.325 is amended by replacing subparagraph (a) by the following:

“(a) The competent authority of the Member State of registry shall, as applicable, issue, or amend a Certificate of Airworthiness (EASA Form 25, see Appendix) or Restricted Certificate of Airworthiness (EASA Form 24, see Appendix) without undue delay when it is satisfied that the applicable requirements of Section A, Subpart H are met.”

17. Paragraph 21B.330 is replaced by the following:

21B.330 Suspension and revocation of certificates of airworthiness and restricted certificates of airworthiness

- (a) Upon evidence that any of the conditions specified in 21A.181(a) is not met, the competent authority of the Member State of registry shall suspend or revoke an airworthiness certificate.
- (b) Upon issuance of the notice of suspension and revocation of a certificate of airworthiness or restricted certificate of airworthiness the competent authority of the Member State of registry shall state the reasons for the suspension or revocation and inform the holder of the certificate on its right to appeal.

18. Subpart P of Section B is replaced by the following:

“SUBPART P — PERMIT TO FLY

21B.520 Investigation

- (a) The Competent Authority shall perform sufficient investigation activities to justify the issuance, or revocation of the permit to fly.
- (b) The Competent Authority shall prepare evaluation procedures covering at least the following elements:
 - 1. evaluation of the eligibility of the applicant;

2. evaluation of the eligibility of the application;
3. evaluation of the documentation received with the application;
4. inspection of the aircraft;
5. approval of the flight conditions in accordance with 21A.710(a)(3).

21B.525 Issue of permits to fly

The Competent Authority shall issue a permit to fly (EASA Form 20a, see Appendix) when it is satisfied that the applicable requirements of Section A, Subpart P are met.

21B.530 Revocation of permits to fly

- (a) Upon evidence that any of the conditions specified in 21A.723(a) are not met, the Competent Authority shall revoke a permit to fly.
- (b) Upon issuance of the notice of revocation of a permit to fly the Competent Authority shall state the reasons for the revocation and inform the holder of the permit to fly on the right to appeal.

21B.545 Record keeping

- (a) The Competent Authority shall operate a system of record keeping that provides adequate traceability of the process for the issue and revocation of each individual permit to fly.
- (b) The records shall at least contain:
 1. the documents provided by the applicant,
 2. documents established during the investigation, in which the activities and the final results of the elements defined in 21B.520(b) are stated, and
 3. a copy of the permit to fly,.
- (c) The records shall be kept for a minimum of six years after the permit ceases to be valid.”

19. The list of Appendices is replaced by the following

“Appendix I - EASA Form 1 Authorised release Certificate
Appendix II - EASA Form 15a Airworthiness Review Certificate
Appendix III - EASA Form 20a Permit to Fly
Appendix IV - EASA Form 20b Permit to Fly (issued by approved organisations)
Appendix V - EASA Form 24 Restricted Certificate of Airworthiness
Appendix VI - EASA Form 25 Certificate of Airworthiness
Appendix VII - EASA Form 45 Noise Certificate
Appendix VIII - EASA Form 52 Aircraft Statement of Conformity
Appendix IX - EASA Form 53 Certificate of Release to Service
Appendix X - EASA Form 55 Production Organisation Approval Certificate
Appendix XI - EASA Form 65 Letter of Agreement [Production without POA]”

20. EASA Form 20 is replaced by the following EASA Form 20a:

Competent authority LOGO

PERMIT TO FLY

(*)	
<p>This permit to fly is issued pursuant to Regulation (EC) 1592/2002, Article 5(3)(a) and certifies that the aircraft is capable of safe flight for the purpose and within the conditions listed below and is valid in all Member States</p> <p>This permit is also valid for flight to and within non Member States provided separate approval is obtained from the competent authorities of such States.</p>	1. Nationality and registration marks.
2. Aircraft manufacturer/type	3. Serial number
4. The permit covers <i>[purpose in accordance with 21A.701(a)]</i>	
5. Holder: <i>[in case of a permit to fly issued for the purpose of 21A.701(a)(15) this should state: "the registered owner"]</i>	
6. Conditions/Remarks	
7. Validity period:	
8. Place and date of issue	9. Signature of the competent authority representative

EASA Form 20a

(*) For use by State of Registry

21. A new EASA Form 20b is introduced as follows:

<p>Member State of the Competent Authority having issued the organisation approval under which the permit to fly is issued; or 'EASA' when approval issued by EASA</p>	<p>PERMIT TO FLY</p>
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<i>Name and Address of the organisation issuing the permit to fly</i>	(*)
<p>This permit to fly is issued pursuant to Regulation (EC) 1592/2002, Article 5(3)(a) and certifies that the aircraft is capable of safe flight for the purpose and within the conditions listed below and is valid in all Member States.</p> <p>This permit is also valid for flight to and within non Member States provided separate approval is obtained from the competent authorities of such States.</p>	1. Nationality and registration marks.
2. Aircraft manufacturer/type	3. Serial number
4. The permit covers <i>[purpose in accordance with 21A.701(a)]</i>	
5. Holder: <i>Organisation issuing the permit to fly</i>	
6. Conditions/Remarks	
7. Validity period:	
8. Place and date of issue	9. Authorised Signature Name Approval Reference No.

EASA Form 20b

(*) For use by Organisation Approval holder

Article 3
Entry into force

This Regulation shall enter into force on 28 March 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

Member of the Commission